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ILLINOIS POLLUTION CONTROL BOARD
May 26, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
) #71-29
 v.)
)
 SAUGET & COMPANY)

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. ALDRICH):

Mr. Robert F. Kaucher, Special Assistant Attorney General,
for the Environmental Protection Agency.

Mr. Harold G. Baker, Jr., Belleville, for Sauget & Company and
Paul Sauget

The Environmental Protection Agency filed a complaint against Sauget and Company, a corporation. On motion of the Assistant Attorney General, Paul Sauget, operator of the company, was added as a party respondent. The complaint alleged that before, on and since November 30, 1970, Respondent had allowed open dumping at his solid waste disposal site in violation of Section 21(a) and (b) of the Environmental Protection Act ("Act") and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules"). The complaint also alleged that since November 30, 1970, Respondent had permitted the open burning of refuse, had failed to provide adequate fencing or shelter, had allowed unsupervised unloading, had not spread and compacted the refuse as it was admitted, and had not covered the refuse at the end of each working day. Further, during the same period, Respondent allegedly had disposed of liquids and hazardous materials without proper approval, had imposed no insect or rodent control, had dumped refuse over a large impractical area and had permitted scavenging and improper salvaging operations. The aforementioned acts are all in violation of various provisions of the Land Rules and/or of the Act. At the hearing on April 13, 1971, allegations of inadequate fire protection and allowing the feeding of domestic animals were dismissed at the request of the Agency.

At the hearing the Agency asked that the wording of its complaint be amended by the substitution of "Before, on and since" for "Since" in all except the first alleged violation. As will become apparent later in the opinion, the failure of the Agency to include the more comprehensive wording was a critical factor in determining the number of violations of which the Board could find Sauget guilty. Respondent claimed surprise, contending that if the request were granted he would be deprived of an opportunity to prepare a defense against the new charges. We agree with Respondent's contention and dismiss

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the request for amendments to the complaint. We hold, however, that Respondent was adequately warned by the Agency complaint against surprise of allegations on November 30.

Before considering the issues in the case, we must deal with Respondent's motion to dismiss the complaint. Respondent argues that the entire complaint should be dismissed on constitutional grounds, contending that the delegation of rule-making power to the Pollution Control Board is unconstitutional. He further contends that the Board cannot impose any fines because of constitutional prohibitions. In PCB 70-34, EPA v. Granite City Steel Co., we held that regulatory powers in highly technical fields are commonly delegated to administrative agencies at every level of government. Responsibility for all rule-making activities would impose an impossible burden on legislatures. We further held that the pollution statutes provide sufficient standards to guide the Board's judgement and adequate procedural safeguards to avoid arbitrary action. We have also held, in PCB 70-38 and 71-6, consolidated, EPA v. Modern Plating Corp., that the Board has the constitutional authority to impose money penalties. We find Respondent's constitutional arguments to be without merit.

The evidence offered in the case leaves little doubt that Sauget & Company allowed open dumping at its solid waste disposal site. The Agency introduced photographs showing that certain identifiable objects were visible on successive days. This is in clear violation of Section 21(a) and (b) of the Act and Rules 3.04 and 5.07(a) of the Land Rules which prohibit open dumping and require that all exposed refuse be covered at the end of each working day. Indeed the record indicates that some refuse present on May 22, 1970, was still uncovered on March 8, 1971. Paul Sauget, secretary-treasurer of Sauget & Company, admitted that refuse had not always been covered by the end of each day (R.169). He explained that this was mostly due to mechanical breakdowns of the equipment and contended that the "rule book" allows for such problems. However, Respondent did not attempt to prove that the failure to cover on the days specified by the Agency was due to mechanical breakdown. Further, there can be no excuse for permitting any refuse to remain uncovered for a period of almost a year. We do note, however, that conditions at the site have improved somewhat in recent months. Respondent has attempted to cover the refuse on a regular basis, but efforts in this regard have been hampered by the tremendous volume of material accepted.

An important issue in the case is the type of cover material used. The record indicates that since March of 1966 Respondent had used cinders as cover. Paul Sauget testified that he had been told by the Chief Sanitary Engineer of the Department of Public Health that cinders were acceptable as cover. (R. 157). We agree that Sauget could rely upon the statement of the Department of Public Health as a defense against a charge of improper covering. Rule 5.07 of the Land Rules states that cover material must permit only minimal percolation of surface water when properly compacted. Clearly, cinders cannot be properly compacted and they allow more than minimal percolation. They are thus not acceptable as cover material and their use is in violation of the regulations.

The practice of covering with cinders must stop.

Respondent is alleged to have allowed open burning at his waste disposal site in violation of Section 9(c) of the Act and Rule 3.05 of the Land Rules. Photographs taken on December 1, 1970, and introduced by the Agency show material burning on the surface of the refuse. There is some evidence that both surface and sub-surface burning occurred on November 30, 1970. Paul Sauget testified that burning is not done intentionally but that some fires start accidentally. He claimed that when this happens, attempts are made to extinguish the fire. However, a witness from the Agency testified that on December 1, 1970, while Agency personnel were present no attempt was made by defendant's employees to put out a fire. There is reason to believe that Respondent has been negligent in his attempts to stop open burning at the landfill site.

Several witnesses testified that Sauget & Company did not have adequate fencing at its waste disposal site, a violation of Rule 4.03 (a) of the Land Rules. The Rule also requires that the site be furnished with an entrance gate that can be locked. These provisions are designed to prevent promiscuous dumping which renders impossible the proper daily compaction and covering of the refuse. Testimony by witnesses for the Agency indicated that the site in question was not adequately fenced nor provided with a proper gate. These conditions were said to exist on November 30, 1970 (R.31,89). The record indicates that improvements have been made since that time. Fencing was apparently installed on two sides of the landfill site between February 8, and March 22, 1971 (R. 122). Respondent did not dispute the Agency's observations of November 30, but indicated that since that date steps had been taken to restrict access to the site. The record is unclear as to the adequacy of some of these measures and we are undecided whether permanent fencing should be provided on all sides of the landfill site. The record indicates that the liquid waste disposal facility is adequately fenced.

Rule 4.03(a) of the Land Rules also requires that the hours of operation of a landfill site be "clearly shown". This is necessary in order to inform the public as to when dumping is permissible and to facilitate proper supervision. Witnesses for the Agency testified that hours of operation were not posted on their visits to the site on November 30, 1970 and March 22, 1971 (R.89,119). This was disputed by Respondent who claimed that signs had been posted since July 1, 1970 (R.167). From the record it is evident that on several occasions the hours of operation were not clearly shown, as required by the regulation.

Again with regard to fencing, Rule 5.04 of the Land Rules requires that portable fences be used when necessary to prevent blowing of litter from the unloading site. Witnesses for the Agency testified that portable fencing had not been provided on three separate occasions since November 30, 1970 (R. 31,60,115). Respondent claimed that portable fences had been used near the face of the landfill since November 30 but did not specifically dispute the contentions of the Agency that fencing was absent on certain dates.

The Agency also alleged that Sauget & Company further violated Rule 5.04 by allowing unsupervised unloading at its waste disposal site. Again the evidence is contradictory. A witness for the Agency testified that the gate to the liquid waste disposal facility was open and unattended on two occasions (R. 119,121). Respondent indicated that an attendant was always present (R.168) but the record is not entirely clear as to the degree of supervision provided at the liquid waste facility.

Sauget & Company is alleged to have violated Rule 5.06 of the Land Rules by not spreading and compacting the refuse as it is admitted. Testimony by witnesses for the Agency indicated that this violation occurred on two occasions (R. 90,115). One of the witnesses interpreted the Rule to mean that refuse must be compacted and covered by the next day (R. 136). This interpretation was not disputed, and we accept it. Since we have already ruled that Respondent is guilty of not covering refuse by the next day, he must also be in violation of Rule 5.06.

Additionally, several witnesses testified that Sauget & Company had not confined the dumping of refuse to the smallest practical area, in violation of Rule 5.03 of the Land Rules. The words "smallest practical" are only vaguely descriptive. We interpret such an area to mean one which can be properly compacted and covered by the end of the working day. We have already found that the Respondent failed to cover his refuse properly. The record does not permit us to decide whether the size of the receiving area contributed in part to this failure.

Respondent is alleged to have had no proper shelter at his solid waste disposal site, in violation of Rule 4.03(c) of the Land Rules. Although the absence of shelter in the landfill area was not disputed, the testimony of Paul Sauget indicated that such a structure had been present in the liquid disposal area since 1959 (R.173). The shelter was said to possess drinking water and toilet facilities, and to be accessible to persons working in the landfill area. We find that the Respondent has provided proper shelter for operating personnel.

The Agency complains that Sauget & Company had disposed of liquids and hazardous materials without prior approval. Rule 5.08 of the Land Rules requires that such disposal be approved by the Department of Public Health. Much testimony was received concerning the disposal of liquids in the liquid waste facility. A witness for the Agency described the odor emanating from these liquids as "very nauseous" (R.119), but no attempt was made to identify the components of the liquids chemically. Agency witnesses testified that they did not know whether or not the liquids were hazardous. Respondent had registered his liquid waste facilities with the Department and no further permit is required. We find that operations at the liquid waste disposal area are not in violation of any regulations. We are concerned, however, that substances deposited in this area may indeed be hazardous. The proximity of the site to the Mississippi River makes it particularly important that such substances be

identified. We will therefore order that Sauget file with the Agency and Board a list of chemicals being disposed or an affidavit from Monsanto (the only user of the chemical dumping site) that the chemicals do not pose a threat to pollution of the Mississippi River by underground seepage. If the wastes prove to be of a hazardous nature, Sauget & Company will be required to obtain a letter of approval from the Agency according to provisions of 5.08 before continuing to handle such wastes.

Although Respondent's operations at the liquid disposal area do not violate the regulations, there is testimony that liquids have sometimes been deposited at the solid waste facilities. An employee of the Agency witnessed the disposal of liquid wastes at the landfill on three occasions since November 30, 1970 (R.114,117,121). All disposal of liquids at the solid waste facilities must cease.

Paul Sauget admitted allowing "midnight driver sanitary people" to dump at the landfill (R.160). If, as we surmise, this is pumpings from septic tanks it is obviously a most unsanitary practice and is in clear violation of Rule 5.08 of the Land Rules.

Sauget & Company is also alleged to have operated its landfill operation without insect and rodent control, in violation of Rule 5.09 of the Land Rules. There is ample evidence that rats have lived at the site (R. 32,39,91). Paul Sauget professed not to know that control was required (R.170). The problem of insect and rodent control is likely due to failure to provide adequate cover for the refuse. Richard Ballard of the Department of Public Health testified that in the absence of daily covering pest control will never be attained (R.92).

There are still more complaints. The Agency alleges that Sauget & Company has violated the regulations dealing with scavenging (Rule 5.12(a), the manual sorting of refuse) and salvaging (Rule 5.10, not defined). Paul Sauget testified that salvage operations were permitted at the site for purposes of safety to the bulldozer and operator and so that the refuse could be compacted properly (R.172). He denied the Agency's contentions that salvaging interfered with the landfill operation and that salvaged materials were allowed to remain at the site in violation of Rules 5.10(c) and (d) of the Land Rules. A witness for the Agency did testify that on March 8, 1971, the sorting operations created less interference than those which he observed earlier (R.61). It is difficult to determine from the record whether many of the activities witnessed constitute a violation of the ban on scavenging or of unsanitary salvage operations. It is clear that materials have been illegally sorted by hand at the dumping site (R.115). This must cease. Scavenging is prohibited and salvage must be conducted at an area remote from the operating face of the fill.

In previous cases where the Respondent had no prior warning and the violations were not flagrant, the Board assessed penalties of \$1000 (EPA v. J. M. Cooling, PCB 70-2, and EPA v. Neal Auto Salvage, Inc., PCB 70-5). Where Respondents had prior warning of a history of

actual violation, fines of \$1500 were assessed (EPA v. Eli Amigoni, PCB 70-15, and EPA v. R. H. Charlett, PCB 70-17). This, however, should not be construed as foreclosing fines of greater amount in appropriate circumstances.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. Sauget & Company and Paul Sauget are to comply with Rules 5.06 and 5.07(a) of the Rules and Regulations for Refuse Disposal Sites and Facilities by completing the compaction and covering of all exposed refuse by the end of each working day.
2. Sauget & Company and Paul Sauget are to cease and desist the use of cinders as cover material.
3. Sauget & Company and Paul Sauget are to cease and desist the open dumping of refuse in violation of Section 21(a) and (b) of the Environmental Protection Act and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities.
4. Sauget & Company and Paul Sauget are to cease and desist the open burning of refuse in violation of Section 9(c) of the Environmental Protection Act and Rule 3.05 of the Rules and Regulations for Refuse Disposal Sites and Facilities.
5. Sauget & Company and Paul Sauget are to cease and desist the disposal of liquids at its solid waste disposal facility in violation of Rule 5.08 of the Rules and Regulations for Refuse Disposal Sites and Facilities.
6. Sauget & Company and Paul Sauget are to comply with Rules 4.03(a) and 5.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities with regard to the posting of hours of operation and the provision of proper fencing. Every point of practicable vehicle access shall be fenced.
7. Sauget & Company and Paul Sauget are to cease and desist the sorting of refuse by hand in violation of Rules 5.10 and/or 5.12(a) of the Rules and Regulations for Refuse Disposal Sites and Facilities.
8. On or before June 15, 1971, Sauget & Company and Paul Sauget shall file with the Agency and the Board a list of chemical compounds being deposited in the liquid waste disposal facility, or an affidavit of Monsanto Company that the chemicals do not pose a threat of pollution of the Mississippi River by underground seepage. Upon failure to furnish such information, the Board shall hold a supplemental hearing on five days' notice to the parties and shall enter such further Order as shall be appropriate.

9. Sauget & Company and Paul Sauget shall remit to the Environmental Protection Agency the sum, in penalty, of \$1,000.00.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 20th day of May, 1971.

John A. Doe